



DECLARATION OF MR. JEFFREY C. CHEN

I, Mr. Jeffrey C. Chen, declare as follows:

1. I am an employee with the firm of Lee and Li, Attorneys-at-Law, 7th Floor, 201, Tun Hua N. Road, Taipei 1105, Taiwan, Republic of China. I am not a U.S. patent attorney and am not familiar with U.S. patent laws.

2. I received a technical explanatory disclosure from Jefferson YS Yang regarding an invention entitled DIAPHRAGM PUMP AND ANODE STREAM RECIRCULATION SYSTEM USING SUCH PUMP FOR A FUEL CELL. Mr. Yang and the assignee, Asia Pacific Fuel Cell Technologies, Ltd. of Taipei, Taiwan, R.O.C., retained our firm to draft the Chinese patent specification based upon his disclosure for filing applications in Taiwan and maybe in the People's Republic of China, P.R.C.

3. On August 15, 2001, Application No. 090120011 was filed in Taiwan, R.O.C. based upon the draft Chinese patent specification.

4. After filing of Taiwanese Application No. 090120011, our firm received an instruction from Asia Pacific Fuel Cell Technologies further retaining us to prepare an English patent specification, based upon the Taiwanese Application, for filing a U.S. patent application.

5. After that, our firm received an instruction from Asia Pacific Fuel Cell Technologies further retaining us to file a People's Republic of China, P.R.C. application based upon the Chinese texts of Taiwanese Application No. 090120011.

6. On August 23, 2001, Application No. 01124277.9 was filed in the People's Republic of China, P.R.C. based upon the draft Chinese patent specification.

7. On August 24, 2001, in conjunction with the prosecution of another case, I received a letter from Mr. James of the law firm of Senniger, Powers, Leavitt & Roedel, One Metropolitan Square, 16th Floor, St. Louis, Missouri, 63102, U.S.A., informing me that a foreign filing license must be obtained from the United States Patent and Trademark Office before filing a foreign application for inventions made in the United States (see Attachment A). Upon reviewing the letter, I realized for the first time that it was necessary to obtain a foreign filing license prior to filing in Taiwan and the People's Republic of China, P.R.C.

8. On August 28, 2001, I wrote a letter to Mr. Kurt F. James informing him that the Taiwanese application would be translated to English within a month and that once it was translated, I would forward it to him for filing in the United States and duly obtaining the retroactive license based thereupon.

9. On September 27, 2001, I wrote a letter to Mr. Kurt F. James forwarding the translated application and asking that he

file a U.S. Utility Application claiming priority from the Taiwanese application (see Attachment B).

10. The subject matter in question was not under a secrecy order at the time it was filed in Taiwan and the People's Republic of China, P.R.C., and the subject matter is not currently under a secrecy order.

11. I have diligently sought a retroactive foreign filing license after discovery of the proscribed foreign filings.

12. The errors described herein occurred through inadvertence without any deceptive intent.

13. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

6 November 2001  
Date

  
Mr. Jeffrey C. Chen